

SENATE BILL No. 306

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-13-3; IC 12-7-2-61; IC 34-30-2-149.5; IC 35-38.

Synopsis: Criminal history checks. Specifies that a limited criminal history check includes arrests even if there is no disposition. Requires requests for limited criminal history submitted by noncriminal justice agencies and individuals to be name based, and requires the state police department to inform persons who receive criminal history information of the scope of the information. Requires a court to order a convicted defendant to be fingerprinted unless the defendant was arrested and processed at the county jail, and requires the security and privacy council to adopt rules to ensure the uniform and efficient submission of criminal history data to the state police department. Grants civil immunity to prosecuting attorneys, clerks, and law enforcement officials for good faith errors or omissions that relate to the transmission of fingerprints or other criminal history data. Permits an employer to request a limited criminal history check of an employee who provides services involving contact with children or individuals who are mentally ill or disabled. Makes other changes and conforming amendments. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2007.

Hershman, Miller

January 11, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 306

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-13-3-11, AS AMENDED BY P.L.20-2006,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 11. ~~(a)~~ As used in this chapter, "limited criminal
4 history" means information with respect to any arrest or criminal
5 charge, which must include:

6 (1) a disposition, **if the disposition is known**; and

7 (2) a photograph of the person who is the subject of the limited
8 criminal history, if a photograph is available.

9 ~~(b) However, the term includes information about any arrest or~~
10 ~~criminal charge that occurred less than one (1) year before the date of~~
11 ~~a request even if no disposition has been entered.~~

12 SECTION 2. IC 10-13-3-11.5 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2007]: Sec. 11.5. **As used in this chapter,**
15 **"name based limited criminal history check" means a search of**
16 **criminal history data maintained by the department that:**

17 **(1) is conducted using the subject's name and other**



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1 identifying information that reasonably ensures the
2 identification of the subject; and

3 **(2) does not use fingerprint identification or another method**
4 **of positive identification.**

5 SECTION 3. IC 10-13-3-19 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 19. As used in this
7 chapter, "request" means asking for release or inspection of a limited
8 criminal history by noncriminal justice organizations or individuals in
9 a manner that: **by providing:**

10 (1) **the subject's name and other information that** reasonably
11 ensures the identification of the subject of the inquiry; and

12 (2) contains a statement of the purpose for which the information
13 is requested.

14 SECTION 4. IC 10-13-3-27, AS AMENDED BY P.L.1-2006,
15 SECTION 171, AND AS AMENDED BY P.L.140-2006, SECTION 5
16 AND P.L.173-2006, SECTION 5, IS CORRECTED AND AMENDED
17 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a)
18 Except as provided in subsection (b), ~~on request if a noncriminal~~
19 **justice agency or an individual requests a name based limited**
20 **criminal history check**, a law enforcement agency shall release a
21 limited criminal history to or allow inspection of a limited criminal
22 history by noncriminal justice organizations or individuals only if the
23 subject of the request:

24 (1) has applied for employment with a noncriminal justice
25 organization or individual;

26 (2) has applied for a license and *has provided* criminal history
27 data ~~as~~ as required by law to be provided in connection with the
28 license;

29 (3) is a candidate for public office or a public official;

30 (4) is in the process of being apprehended by a law enforcement
31 agency;

32 (5) is placed under arrest for the alleged commission of a crime;

33 (6) has charged that the subject's rights have been abused
34 repeatedly by criminal justice agencies;

35 (7) is the subject of a judicial decision or determination with
36 respect to the setting of bond, plea bargaining, sentencing, or
37 probation;

38 (8) has volunteered services that involve contact with, care of, or
39 supervision over a child who is being placed, matched, or
40 monitored by a social services agency or a nonprofit corporation;

41 **(9) is employed by a noncriminal justice organization or an**
42 **individual to provide services that involve contact with, care**

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of, or supervision over:

(A) a child; or

(B) an individual who is:

(i) mentally ill (as defined in IC 12-7-2-131);

(ii) physically disabled; or

(iii) developmentally disabled (as defined in IC 12-7-2-62);

~~(9)~~ (10) is currently residing in a location designated by the department of child services (established by ~~IC 31-33-1.5-2~~ IC 31-25-1-1) or by a juvenile court as the out-of-home placement for a child at the time the child will reside in the location;

~~(10)~~ (11) has volunteered services at a public school (as defined in IC 20-18-2-15) or nonpublic school (as defined in IC 20-18-2-12) that involve contact with, care of, or supervision over a student enrolled in the school;

~~(11)~~ (12) is being investigated for welfare fraud by an investigator of the division of family resources or a county office of family and children;

~~(12)~~ (13) is being sought by the parent locator service of the child support bureau of the ~~division~~ department of family and children; child services;

~~(13)~~ (14) is or was required to register as a sex ~~and violent~~ offender under ~~IC 5-2-12~~ IC 11-8-8; or

~~(14)~~ (15) has been convicted of any of the following:

(A) Rape (IC 35-42-4-1), if the victim is less than eighteen (18) years of age.

(B) Criminal deviate conduct (IC 35-42-4-2), if the victim is less than eighteen (18) years of age.

(C) Child molesting (IC 35-42-4-3).

(D) Child exploitation (IC 35-42-4-4(b)).

(E) Possession of child pornography (IC 35-42-4-4(c)).

(F) Vicarious sexual gratification (IC 35-42-4-5).

(G) Child solicitation (IC 35-42-4-6).

(H) Child seduction (IC 35-42-4-7).

(I) Sexual misconduct with a minor as a felony (IC 35-42-4-9).

(J) Incest (IC 35-46-1-3), if the victim is less than eighteen (18) years of age.

However, limited criminal history information obtained from the National Crime Information Center may not be released under this section except to the extent permitted by the Attorney General of the United States.

(b) If one (1) or more of the following noncriminal justice

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organizations requests a name based limited criminal history check, a law enforcement agency shall allow inspection of a limited criminal history by and release a limited criminal history to the following noncriminal justice organizations organization:

- (1) Federally chartered or insured banking institutions.
- (2) Officials of state and local government for any of the following purposes:
 - (A) Employment with a state or local governmental entity.
 - (B) Licensing.
- (3) Segments of the securities industry identified under 15 U.S.C. 78q(f)(2).

(c) The department shall provide a noncriminal justice organization or an individual who requests a limited criminal history check under this section with the following notice in writing:

"The results of the criminal background check you have requested include only records of arrests or convictions that happened in Indiana. These results do not include any arrests or convictions that may have occurred in another state, nor do they include an arrest or delinquency finding that may have occurred while the subject was a minor."

(c) (d) Any person who **knowingly or intentionally** uses limited criminal history for any purpose not specified under this section commits a Class A misdemeanor.

SECTION 5. IC 10-13-3-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 33. (a) The council shall adopt rules under IC 4-22-2 to:

- (1) assure the completeness and accuracy of criminal history data;
- (2) protect information from loss, alteration, destruction, or improper direct access to the information files;
- (3) prevent unreasonable interference with the regular discharge of the duties of employees of law enforcement agencies; **and**
- (4) establish procedures to ensure the uniform and efficient transmission of criminal history data to the department, including the development of an electronic format for the submission of criminal history data; and**
- (5) carry out this chapter.**

(b) If a person makes a challenge under section 31(b) of this chapter, the department shall:

- (1) make the changes requested, if it determines the data is in error; or
- (2) conduct a hearing under IC 4-21.5-3, if requested by the

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person making the challenge.

(c) The rules adopted under this chapter must provide for inspection in a reasonable and timely manner.

SECTION 6. IC 10-13-3-36, AS AMENDED BY P.L.142-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 36. (a) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **record check** if the request is made by a nonprofit organization:

(1) that has been in existence for at least ten (10) years; and

(2) that:

(A) has a primary purpose of providing an individual relationship for a child with an adult volunteer if the request is made as part of a background investigation of a prospective adult volunteer for the organization;

(B) is a home health agency licensed under IC 16-27-1;

(C) is a community mental retardation and other developmental disabilities center (as defined in IC 12-7-2-39);

(D) is a supervised group living facility licensed under IC 12-28-5;

(E) is an area agency on aging designated under IC 12-10-1;

(F) is a community action agency (as defined in IC 12-14-23-2);

(G) is the owner or operator of a hospice program licensed under IC 16-25-3; or

(H) is a community mental health center (as defined in IC 12-7-2-38).

(b) Except as provided in subsection (d), the department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **record check** made by the department of child services or the division of family resources if the request is made as part of a background investigation of an applicant for a license under IC 12-17.2 or IC 31-27.

(c) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **check** if the request is made by a school corporation, special education cooperative, or nonpublic school (as defined in IC 20-18-2-12) as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer for the school corporation, special education cooperative, or nonpublic school.

(d) As used in this subsection, "state agency" means an authority, a board, a branch, a commission, a committee, a department, a division,

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or another instrumentality of state government, including the executive and judicial branches of state government, the principal secretary of the senate, the principal clerk of the house of representatives, the executive director of the legislative services agency, a state elected official's office, or a body corporate and politic, but does not include a state educational institution (as defined in IC 20-12-0.5-1). The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history **check** if the request is made:

(1) by a state agency; and

(2) through the computer gateway that is administered by the office of technology established by IC 4-13.1-2-1.

(e) The department may not charge a fee for responding to a request for ~~the release of a~~ **name based** limited criminal history record **check** made by the Indiana professional licensing agency established by IC 25-1-5-3 if the request is:

(1) made through the computer gateway that is administered by the office of technology; and

(2) part of a background investigation of a practitioner or an individual who has applied for a license issued by a board (as defined in IC 25-1-9-1).

(f) The department may not charge a church or religious society a fee for responding to a request for the release of a limited criminal history record if:

(1) the church or religious society is a religious organization exempt from federal income taxation under Section 501 of the Internal Revenue Code;

(2) the request is made as part of a background investigation of a prospective or current employee or a prospective or current adult volunteer; and

(3) the employee or volunteer works in a nonprofit program or ministry of the church or religious society, including a child care ministry registered under IC 12-17.2-6.

SECTION 7. IC 12-7-2-61 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 61. "Developmental disability" means the following:

(1) Except as provided in subdivision (2), before July 1, 1993, the term means a disability of an individual that:

(A) is attributable to:

(i) mental retardation, cerebral palsy, epilepsy, or autism;

(ii) any other condition found to be closely related to mental retardation, because this condition results in similar impairment of general intellectual functioning or adaptive

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behavior or requires similar treatment and services; or

(iii) dyslexia resulting from a disability described in this subdivision;

(B) originates before the person is eighteen (18) years of age;

(C) has continued or is expected to continue indefinitely; and

(D) constitutes a substantial disability to the individual's ability to function normally in society.

(2) For purposes of IC 12-10-7 and IC 12-28-1 before July 1, 1993, and for purposes of ~~IC 12-28-1~~ **this title** after June 30, 1993, **and for purposes of IC 10-13-3-27**, the term means a severe, chronic disability of an individual that:

(A) is attributable to a mental or physical impairment, or a combination of mental and physical impairments (other than a sole diagnosis of mental illness);

(B) is manifested before the individual is twenty-two (22) years of age;

(C) is likely to continue indefinitely;

(D) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and

(E) results in substantial limitations in at least three (3) of the following:

(i) Self-care.

(ii) Receptive and expressive language.

(iii) Learning.

(iv) Mobility.

(v) Self-direction.

(vi) Capacity for independent living.

(vii) Economic self-sufficiency.

SECTION 8. IC 34-30-2-149.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 149.5. IC 35-38-1-28 (Concerning errors or omissions in the transmission of fingerprints, case history data, or sentencing data).**

SECTION 9. IC 35-38-1-28 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 28. (a) Except as provided in subsection (c), immediately after sentencing for an offense, the court shall order the defendant to be fingerprinted by an individual qualified to take fingerprints. The fingerprints may be recorded in any reliable manner, including by the use of a digital fingerprinting device.**

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(b) The court shall order a law enforcement officer to provide the fingerprints to the prosecuting attorney and the state police department, in hard copy or in an electronic format approved by the security and privacy council established by IC 10-13-3-34.

(c) The court is not required to order the defendant to be fingerprinted if the defendant was previously arrested and processed at the county jail.

(d) A clerk, court, law enforcement officer, or prosecuting attorney is immune from civil liability for an error or omission in the transmission of fingerprints, case history data, or sentencing data, unless the error or omission constitutes willful or wanton misconduct or gross negligence.

SECTION 10. IC 35-38-5-5, AS AMENDED BY P.L.2-2005, SECTION 124, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) This section does not apply to a request to a law enforcement agency for the release or inspection of a limited criminal history to a noncriminal justice organization or individual whenever the subject of the request is described in IC 10-13-3-27(a)(8), **IC 10-13-3-27(a)(9)**, or ~~IC 10-13-3-27(a)(12)~~. **IC 10-13-3-27(a)(13)**.

(b) A person may petition the state police department to limit access to the person's limited criminal history to criminal justice agencies if more than fifteen (15) years have elapsed since the date the person was discharged from probation, imprisonment, or parole (whichever is later) for the last conviction for a crime.

(c) When a petition is filed under subsection (b), the state police department shall not release limited criminal history to noncriminal justice agencies under IC 10-13-3-27.

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